



March 18, 2004

California Court of Appeals Highlights an Employer's Need to Have Valid and Enforceable Arbitration Agreements

On March 11, 2004, the California Court of Appeals reversed the superior court in *Ralphs Grocery Company v. Kelvin Massie et al.*, which addressed the arbitrability of an employee's claim filed with the Division of Labor Standards Enforcement ("DLSE") without first determining whether the employer's arbitration agreement was enforceable and applicable.

Kelvin Massie began his employment at Ralphs in 1985. In 2001, Massie signed an employee acknowledgement form stating that he read and understood Ralphs' "Dispute Resolution Program Mediation & Binding Arbitration Policy." Subsequently, in May 2002, Ralphs terminated Massie's employment. In October 2002, Massie filed a discrimination complaint with the DLSE, claiming Ralphs violated Labor Code Section 96(k) by discharging him for "Lawful conduct occurring during nonworking hours away from the employer's premises."

In February 2003, Ralphs filed a petition in superior court to compel arbitration with Massie and to stay the DLSE's administrative proceedings on Massie's complaint. Massie had three arguments: (1) the arbitration agreement was unenforceable because it was procedurally and substantively unconscionable; (2) the filing of a discrimination complaint with the DLSE did not trigger Massie's contractual obligation to arbitrate; and (3) Ralphs' right to compel arbitration was not yet ripe. In April 2003, the superior court denied Ralphs' petition, finding its contractual arbitration right unripe and that the DLSE was not precluded from investigating Massie's complaint.

The superior court denied Ralphs' petition to (1) compel former employee Kelvin Massie to arbitrate an employment discrimination complaint he filed with the DLSE, and (2) stay the Labor Commissioner from taking any administrative action on Massie's complaint. The Court of Appeals directed the superior court to determine whether the parties' arbitration agreement is binding and enforceable.

The Court of Appeals reversed and held that the superior court did not comply with the process mandated by the United States Supreme Court in *Howsam v. Dean Witter Reynolds, Inc.* (2002) 123 S.Ct. 588, which requires a determination of the two "gateway issues of arbitrability." The first gateway issue is whether the arbitration agreement is valid and enforceable. The second gateway is whether the court may compel arbitration. Because the superior court failed to determine the first gateway issue of arbitrability, the Court of Appeals reversed.

While the Court of Appeals did not have to rule on the second gateway issue, it did provide guidance. The Court explained that the State's administrative proceedings under Labor Code Sections 98.6 and 98.7 implement the State's authority to protect employees from violations of their constitutional and statutory civil rights and civil liberties by their employers. However, these proceedings may be preempted by the Federal Arbitration Act ("FAA") if it interferes or conflicts irreconcilably with an employer's contractual arbitration rights.

As this decision reflects, employers may want to consider the benefits of an arbitration agreement. Employers who have an arbitration agreement in place should work with labor counsel to review the arbitration agreement and ensure the agreement is valid and enforceable.

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